

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1598 be amended to read as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new  
 2       paragraph and insert:  
 3       "SECTION 1. IC 6-3-2-21.7, AS ADDED BY P.L.223-2007,  
 4       SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5       JANUARY 1, 2010]: Sec. 21.7. (a) This section applies to a qualified  
 6       patent issued to a taxpayer after December 31, 2007.  
 7       **(b) As used in this section, "development process" with respect**  
 8       **to an invention has the meaning of the term under federal patent**  
 9       **law. The term includes both:**  
 10       **(1) the discovery and conception of the underlying invention;**  
 11       **and**  
 12       **(2) the reduction of the underlying invention to practice.**  
 13       ~~(b)~~ **(c)** As used in this section, "invention" has the meaning set forth  
 14       in 35 U.S.C. 100(a).  
 15       ~~(c)~~ **(d)** As used in this section, "qualified patent" means:  
 16       (1) a utility patent issued under 35 U.S.C. 101; or  
 17       (2) a plant patent issued under 35 U.S.C. 161;  
 18       after December 31, 2007, for an invention resulting from a  
 19       development process conducted in Indiana, **regardless of the location**  
 20       **of an associated clinical trial, if any.** The term does not include a  
 21       design patent issued under 35 U.S.C. 171.  
 22       ~~(d)~~ **(e)** As used in this section, "qualified taxpayer" means a taxpayer  
 23       that on the effective filing date of the claimed invention:  
 24       (1) is either:

- 1 (A) an individual or corporation, if the number of employees  
 2 of the individual or corporation, including affiliates as  
 3 specified in 13 CFR 121.103, does not exceed five hundred  
 4 (500) persons; or  
 5 (B) a nonprofit organization or nonprofit corporation as  
 6 specified in:  
 7 (i) 37 CFR 1.27(a)(3)(ii)(A) or 37 CFR 1.27(a)(3)(ii)(B); or  
 8 (ii) IC 23-17; and  
 9 (2) is domiciled in Indiana.
- 10 ~~(e)~~ **(f)** Subject to subsections ~~(g)~~ **(h)** and ~~(h)~~ **(i)**, in determining  
 11 adjusted gross income or taxable income under IC 6-3-1-3.5 or  
 12 IC 6-5.5-1-2, a qualified taxpayer is entitled to an exemption from  
 13 taxation under IC 6-3-1 through IC 6-3-7 for the following:
- 14 (1) Licensing fees, **royalties, milestone payments**, or other  
 15 income received for the use of a qualified patent.  
 16 (2) Royalties received for the infringement of a qualified patent.  
 17 (3) Receipts ~~from attributable to~~ the sale of a qualified patent,  
 18 **including the fair market value of receipts allocable to a**  
 19 **qualified patent as the result of the sale of a trade or business.**  
 20 (4) Subject to subsection ~~(f)~~ **(g)**, income from the taxpayer's own  
 21 use of the taxpayer's qualified patent to produce the claimed  
 22 invention.
- 23 ~~(f)~~ **(g)** The exemption provided by subsection ~~(e)(4)~~ **(f)(4)** may not  
 24 exceed the fair market value of the licensing fees or other income that  
 25 would be received by allowing use of the qualified taxpayer's qualified  
 26 patent by someone other than the taxpayer. The fair market value  
 27 referred to in this subsection must be determined in each taxable year  
 28 in which the qualified taxpayer claims an exemption under subsection  
 29 ~~(e)(4)~~ **(f)(4)**.
- 30 ~~(g)~~ **(h)** The total amount of exemptions claimed under this section  
 31 by a qualified taxpayer in a taxable year may not exceed five million  
 32 dollars (\$5,000,000).
- 33 ~~(h)~~ **(i)** A taxpayer may not claim an exemption under this section  
 34 with respect to a particular qualified patent for more than ten (10)  
 35 taxable years. Subject to the provisions of this section, the following  
 36 amount of the income, royalties, or receipts described in subsection ~~(e)~~  
 37 **(f)** from a particular qualified patent is exempt:
- 38 (1) Fifty percent (50%) for each of the first five (5) taxable years  
 39 in which the exemption is claimed for the qualified patent.  
 40 (2) Forty percent (40%) for the sixth taxable year in which the  
 41 exemption is claimed for the qualified patent.  
 42 (3) Thirty percent (30%) for the seventh taxable year in which the  
 43 exemption is claimed for the qualified patent.  
 44 (4) Twenty percent (20%) for the eighth taxable year in which the  
 45 exemption is claimed for the qualified patent.  
 46 (5) Ten percent (10%) each year for the ninth and tenth taxable

1 year in which the exemption is claimed for the qualified patent.

2 (6) No exemption under this section for the particular qualified  
3 patent after the eleventh taxable year in which the exemption is  
4 claimed for the qualified patent.

5 (j) To receive the exemption provided by this section, a qualified  
6 taxpayer must claim the exemption on the qualified taxpayer's annual  
7 state tax return or returns in the manner prescribed by the department.  
8 The qualified taxpayer shall submit to the department all information  
9 that the department determines is necessary for the determination of the  
10 exemption provided by this section.

11 (k) On or before December 1 of each year, the department shall  
12 provide an evaluation report to the legislative council, the budget  
13 committee, and the Indiana economic development corporation. The  
14 evaluation report must contain the following:

15 (1) The number of taxpayers claiming an exemption under this  
16 section.

17 (2) The sum of all the exemptions claimed under this section.

18 (3) The North American Industry Classification System code for  
19 each taxpayer claiming an exemption under this section.

20 (4) Any other information the department considers appropriate,  
21 including the number of qualified patents for which an exemption  
22 was claimed under this section.

23 The report required under this subsection must be in an electronic  
24 format under IC 5-14-6."

25 Page 6, after line 23, begin a new paragraph and insert:

26 "SECTION 10. [EFFECTIVE JANUARY 1, 2010] **IC 6-3-2-21.7,**  
27 **as amended by this act, applies only to taxable years beginning**  
28 **after December 31, 2009.**"

29 Renumber all SECTIONS consecutively.

(Reference is to HB 1598 as printed February 20, 2009.)

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Representative Bosma